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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/160298

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 02, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on October 16, 2014, at Kenosha, Wisconsin.

The issue for determination is whether there was a \$1,699.03 overpayment when Petitioner failed to timely report a change of employment that did not change Petitioner's eligibility for child care assistance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 20, 2014 Petitioner's employment with [REDACTED] ended. Petitioner was eligible for child care assistance while she was employed with Extendicare.

3. On July 14, 2014 Petitioner reported to the agency that her employment with [REDACTED] ended on June 20, 2014. Petitioner also reported employment with [REDACTED]. Petitioner accidentally reported that her [REDACTED] employment had ended when this was her new job that she was starting.
4. The agency verified that Petitioner started employment with [REDACTED], and that Petitioner is eligible for child care assistance with this new job.
5. The agency assessed an overpayment of \$1,699.09 for the time period of June 21, 2014 until Petitioner's report of her change in employment on July 14, 2014. The agency reasoned that Petitioner was not in an "approved activity" during this short time period because she had not reported this change of employment to the agency.

### DISCUSSION

The purpose of the Wisconsin Shares Child Care Program is to provide child care assistance for working low-income families. *Child Care Manual* § 1.1.1. The Wisconsin Shares Child Care Program is regulated under DCF 201 Administration of Child Care Funds (administrative code) and Wisconsin Statutes s. 49.155 Stats. *Child Care Manual* § 1.1.1.

In order to qualify for child care assistance, the recipient must be in an "approved activity." *Child Care Manual* § 1.5.0 (viewable online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed October 2014)). The term "approved activity" is a term of art in child care assistance cases. Approved activities include employment with a qualified employer. *Id.* at § 1.5.3.1. To be a qualified employer, the employer must have a federal employer identification number, have a Worker's Compensation Insurance Policy, report wages to unemployment insurance, and comply with minimum wage laws. *Id.* at § 1.5.3.1. For example, if an employer pays a person in cash, and does not report those payments, then the employment would not be an approved activity, and a person working for that employer would not be eligible for child care assistance. *Id.*

A person receiving child care assistance is required to report "any change that in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days." *Id.* at § 1.51.1. It is important note to that this reporting requirement is only for changes that may **"affect a person's eligibility."** *Id.* (emphasize added).

In this case it is undisputed that Petitioner did not report the change in her employment within 10 days of that change. However, it is also undisputed that Petitioner's new employment did not change her eligibility for child care assistance. On the date of the hearing after Petitioner had reported this change. Petitioner was working at her new job, and Petitioner was receiving child care assistance.

It is unclear why Petitioner did not report her new job to the agency within 10 days. Petitioner states that she called the agency, and a person from the agency's 1-800 call center explained that she should wait to report the change until she had four weeks worth of paystubs for income verification. This may have been reasonable advice when one considers that the policy manual states a change report is only required if the change affects eligibility. The agency testified that they had no record of this call. It is unclear why there would be no record of the call.

In this case the agency assessed an overpayment from the date of the old job ended to the date of report. The agency reasoned that Petitioner was not an approved activity until she reported the new job. Whether or not something is reported and approved by the agency is not the determining factor of whether it is an approved activity. In this case her new employment is an approved activity as she is open and receiving child care assistance for the employment. Assuming Petitioner was working in her new employment when she received child care assistance, this is not a reason to assess an overpayment.

I note that if this new job caused Petitioner to be ineligible for child care assistance, the agency would have been correct to assess an overpayment. That would have been a change that would have affected Petitioner's eligibility that Petitioner failed to timely report. In addition, Petitioner would not have been in approved activity because she would have been ineligible for assistance.

It is unclear from the hearing if there is any gap between Petitioner's old job and new job during which the agency paid Petitioner's child care provider. The agency should determine if there is any gap during which Petitioner received child care assistance she was ineligible to receive. Petitioner would be responsible for any overpayment associated with this gap as she would not have been working in an approved activity.

### **CONCLUSIONS OF LAW**

The agency incorrectly assessed the overpayment in this case. The reporting requirement does not apply to Petitioner because her change in employment did not affect her eligibility for child care assistance.

**THEREFORE, it is**

### **ORDERED**

That this case is remanded back to the agency to re-determine if there is an overpayment. The only overpayment would be for any gap in Petitioner's employment during which Petitioner received child care assistance. The agency has 10 days to comply with this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

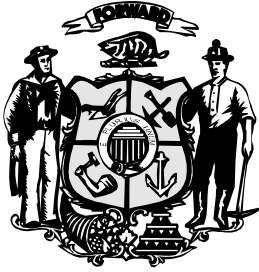
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of October, 2014

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 22, 2014.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Child Care Fraud